

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Access Charge Reform

US West Petition for Partial Stay

CC Docket No. 96-262

CCB/CPD 97-43

**REPLY OF BELL ATLANTIC¹ TO OPPOSITIONS
TO US WEST'S PETITION FOR PARTIAL STAY**

Several parties oppose US West's request for stay of the "per-minute residual TIC exemption,"² making the same arguments they made in opposing the Petition for Stay Pending Judicial Review filed by NYNEX (now Bell Atlantic).³

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.; New York Telephone Company and New England Telephone and Telegraph Company.

² The "per-minute residual TIC exemption," codified in 47 C.F.R. Section 69.155(c), prohibits the local exchange carriers ("LECs") from assessing the per-minute residual transport interconnection charge ("per-minute residual TIC") on minutes of use that use a LEC's Local Switching services, but that do not use the LEC's Local Transport services.

³ See MCI's Opposition to the US West Petition for A Partial Stay ("MCI Opposition") at p. 1; Opposition of the Telecommunications Resellers Association ("TRA Opposition") at p. 2; Opposition to Petition for Partial Stay Pending Judicial Review of Teleport Communications Group, Inc. ("TCG Opposition") at p. 1, n.2; Opposition of LBC Communications, Inc. to Petition for Stay Pending Judicial Review ("LBC Opposition") at pp. 1-5. Ameritech filed in

Bell Atlantic fully addressed these arguments in its Reply to Oppositions to its stay request, and need not repeat these arguments here.⁴

However, MCI's opposition to US West's petition reveals that it suffers from a persistent misunderstanding of the Commission's *Access Charge Reform Order*,⁵ and that it either has not read, or does not understand, Bell Atlantic's Reply, which pointed out MCI's errors.⁶ At the risk of being repetitious, Bell Atlantic takes this opportunity to explain, once again, how MCI's opposition to a stay of the per-minute residual TIC rule is based on erroneous interpretations of the Commission's rules.

support of US West's petition, arguing that Ameritech will also be adversely affected by the residual TIC exemption.

⁴ *See* In the Matter of Access Charge Reform, CC Docket No. 96-262, Reply To Oppositions To Petition For Stay Pending Judicial Review, filed by Bell Atlantic on August 15, 1997.

⁵ In the Matter of Access Charge Reform, CC Docket No. 96-262, First Report and Order (rel. May 16, 1997) ("*Access Charge Reform Order*"); *errata* (rel. June 4, 1997).

⁶ In addition, TCG omits to mention that it admitted in its Petition for Reconsideration of the *Access Charge Reform* that it supported the residual TIC exemption only as a means of offsetting the impact of the "unitary" tandem-switched transport rate structure, which the Commission subsequently decided to eliminate. *See* Reply Comments of Bell Atlantic On Petitions for Reconsideration of Access Charge Reform Order, filed September 3, 1997, at pp. 3-4, *citing* TCG Petition For Reconsideration at p. 4, n.10.

I. The Commission Never Found That All Residual TIC Costs Are Transport Service-Related Costs.

MCI argues that the Commission is correct in prohibiting the LECs from recovering the per-minute residual TIC from traffic that is routed to the transport facilities of competitive local exchange carriers ("CLECs"), because "the Commission's supposition that they were likely local transport costs is unassailable."⁷ This mischaracterizes the Commission's findings in the *Access Charge Reform Order*. The Commission made it quite clear that, after identifying costs that will be shifted to other rate elements, such as costs for SS7, tandem switching, multiplexing, host/remote trunking, central office equipment maintenance, etc., it could not identify the nature of the costs that remained in the residual TIC.⁸ It did not find that all of these costs are transport-related. Therefore, there is no justification for a rule that prevents the LECs from recovering the per-minute residual TIC on traffic that uses the LECs' switched access services, but that is routed to transport services of other carriers.

II. The Commission Did Not Prohibit The LECs From Recovering Residual TIC Tandem Switching Costs.

In its opposition to US West's stay request, MCI claims that the Commission did not allow the LECs to recover any tandem switching costs through either the per-minute residual TIC or the presubscribed interexchange

⁷ MCI Opposition at p. 4.

⁸ See *Access Charge Reform Order*, para. 232.

carrier charge ("PICC").⁹ Since the Commission did not allow the LECs to recover two-thirds of the residual TIC tandem switching costs in their tandem switching rates as of January 1, 1998, MCI is arguing that the Commission simply disallowed these costs.

This is patently absurd. The Commission never found that the LECs should be prohibited from recovering the costs of tandem switching. The Commission made it perfectly clear that tandem switching costs would continue to be recovered through the TIC and PICC rate elements until the three-year plan for shifting these costs from the residual TIC to the tandem switching rates was completed.¹⁰

MCI bases its arguments, as it did previously in opposing Bell Atlantic's stay petition and in response to petitions for reconsideration of the *Access Charge Reform Order*, on an erroneous interpretation of paragraph 235 of the *Access Charge Reform Order*.¹¹ In Paragraph 235, the Commission instructed the LECs to exclude transport service-related costs from the TIC for the sole purpose of targeting X-factor reductions to the TIC in the July 1, 1997 annual access tariff revisions. The Commission did this to leave enough revenues in the TIC to allow

⁹ See MCI Opposition at p. 5-6, 15 & n.4.

¹⁰ See *Access Charge Reform Order* at para. 218.

¹¹ See MCI Opposition at p. 5, n.4; MCI Opposition to Bell Atlantic Petition for Stay Pending Judicial Review at p. 10; MCI Opposition to Petitions for Reconsideration at pp. 13-14.

the transition of service related costs to other rate elements in the subsequent access restructure filings. The subsequent paragraphs of the *Access Charge Reform Order* make it clear that the LECs are to restructure their access charges on January 1, 1998 and thereafter without regard to the percentage limits on TIC reductions in paragraph 235. None of these actions can be interpreted as prohibiting the LECs from continuing to recover tandem switching costs through the per-minute residual TIC and PICC rate elements during the transition period.

III. The Commission Did Not Disallow Any Residual TIC Costs.

MCI disagrees with US West's argument that the TIC costs "are based on legitimate LEC costs and should continue to be recovered," arguing that this is inconsistent with the Commission's decision to target X-factor reductions to the residual TIC.¹² MCI misinterprets the purpose of the targeting mechanism. As Bell Atlantic previously explained, the Commission's purpose in targeting X-factor reductions is to eliminate the per-minute residual TIC rate element, and not to disallow residual interconnection charge revenues.¹³ By taking X-factor reductions that would normally reduce the price cap limits for other rate elements and by focusing them on the per-minute residual TIC, the Commission will eliminate the per-minute residual TIC rate element without requiring the

¹² See MCI Opposition at pp. 6-7.

¹³ See Bell Atlantic Reply Comments To Petitions for Reconsideration of Access Charge Reform Order, pp. 4-5; 47 C.F.R. Section 61.45(i) & (j).

LECs to make any additional rate reductions beyond the normal effects of the X-factor. Since the targeting mechanism does not disallow any costs, it is consistent with US West's argument that the residual TIC costs are real costs that the LECs are entitled to recover by applying the per-minute residual TIC to both LEC and CLEC transport.

IV. The Commission's Rules Prevent The LECs From Responding To Competition By Deaveraging The TIC.

In opposing US West's arguments that the residual TIC exemption rule will allow its access customers to avoid up to \$192 million in residual TIC charges, MCI argues that US West could respond by deaveraging its rates to recover the revenues from its remaining customers.¹⁴ However, the Commission's rules only allow the LECs to deaverage their Local Transport rates, and not the TIC, absent a waiver.¹⁵ For companies, such as US West and Bell Atlantic, that will have a large per-minute residual TIC, the residual TIC exemption provides an overwhelming incentive for the interexchange carriers to

¹⁴ See MCI Opposition at pp. 14-15; *see also* LBC Opposition at p. 3; TCG Opposition at p. 10.

¹⁵ Compare 47 C.F.R. Section 69.123 *with* Section 69.124. Even Bell Atlantic, which received a waiver to deaverage the TIC by zone in LATA 132 in New York, must maintain the same residual TIC rates in both collocated and non-collocated offices within a LATA or zone. Since the CLECs have built, or have ordered, expanded interconnection nodes in every zone both within and outside 132 LATA, Bell Atlantic cannot shield its residual TIC revenues through deaveraging.

use CLEC transport, even if the LEC reduces its own transport rates to zero.¹⁶

There is no viable competitive strategy that would permit the LECs to retain residual TIC revenues in areas where there are alternative competitive providers of transport services unless the per-minute residual TIC rule is stayed.

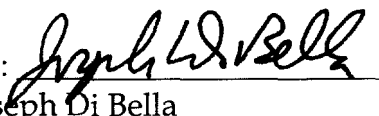
V. Conclusion

For the foregoing reasons, the Commission should issue a stay of the per-minute residual TIC exemption rule pending judicial review.

Respectfully submitted,

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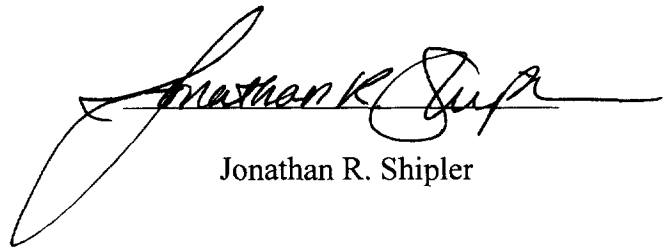
Attorneys for the Bell Atlantic
Telephone Companies

Dated: September 19, 1997

¹⁶ See US West Petition for Partial Stay Pending Judicial Review at pp. 10-12; Bell Atlantic Petition for Stay Pending Judicial Review at pp. 19-23, filed August 14, 1997.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 1997, a copy of the foregoing "Reply of Bell Atlantic to Oppositions to U S West's Petition for Partial Stay" was served by first class U.S. mail, postage prepaid, on the parties listed on the attached service list.

A handwritten signature in dark ink, appearing to read "Jonathan R. Shipler", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

* BY HAND

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